IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

FAO.No. 40 of 2007()

OS.187/2005 of PRINCIPAL SUB COURT, PALAKKAD
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APPELLANTS/PETITIONERS/DEFENDANTS:
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1. PADMANABHAN, S/O.GOPALAKRISHNA KURUP,
   PALAYIL, KOTTEKKAD AMSOM, PALAKKAD TALUK.

2. HEMAMBIKA, W/O. PADMANABHAN,
   - DO- -DO-.

   BY ADV. SRI. SAJAN VARGHEESE K.
   ADV. SRI. LIJU. M.P

RESPONDENT/ RESPONDENT/PLAINTIFF:

THE FEDERAL BANK LTD.,
REGD. OFFICE AT ALUVA, REP. BY ITS
PALAKKAD BRANCH MANAGER.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 362 OF 2007 IN F.A.O. No. 40 OF 2007.

DISPOSED OF VIDE JUDGMENT IN F.A.O..

22.02.2007

SD/- KURIAN JOSEPH, JUDGE.
SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE.

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KURIAN JOSEPH & K.T. SANKARAN, JJ.

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F.A.O. No. 40 OF 2007

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Dated this the 22nd February, 2007

J U D G M E N T

Sankaran, J:

Appellants challenge the order in I.A.No. 1869 of 2006, by which the application filed by them under Order IX Rule 13 of the Code of Civil Procedure was dismissed by the court below. Appellants were declared ex parte on 16.02.2006. As per the order in I.A.No. 539 of 2006, the ex parte order was set aside on condition that the appellants shall pay costs. Cost was not paid and therefore the application was dismissed. The court below decreed the suit ex parte on 18.07.2006. The appellants have not so far filed any written statement. However, they filed an application, viz., I.A. 1869 of 2006 to set aside the ex parte decree. The court below rejected the prayer made by the appellants on the ground that though sufficient opportunity was given to them, they have not complied with the order in I.A. No. 539 of 2006 and that there was no sufficient ground for non appearance on the date fixed for the trial.

2. After hearing the counsel for the parties, we are of the view that the ex parte decree can be set aside on terms. Considering the fact that the appellants did not co-operate with the court resulting in waste of precious time of the court , it is highly necessary that the appellants be made liable not only to compensate the respondents by way of costs but also to pay costs to the District Legal Services Authority and also to the Kerala High Court Legal Services Committee.

3. Accordingly, the ex parte decree is set aside on condition that the appellants shall pay a sum of Rs. 4,000/- (Rupees four thousand only) as costs to the respondents, Rs. 4,000/- as costs to the District Legal Services Authority, Palakkad and Rs. 4,000/- as costs to the Kerala High Court Legal Services Committee, within a period of three weeks from today.

4. If any of the conditions mentioned above is not complied with, the order impugned shall stand confirmed and the appeal shall stand dismissed. In case the conditions are complied with and consequently the ex parte decree is set aside as per this judgment, the appellants shall file a

written statement within a period of one week thereafter. If written statement is not filed as directed in this judgment, then also ex parte decree shall stand revived .

F.A.O. is allowed as above.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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